Integrated Health Services, Inc. d/b/a IHS at West Broward *and* 1115, Florida Division of 1199, SEIU, AFL–CIO, CLC

Integrated Health Services, Inc. d/b/a Fountainhead Nursing and Rehabilitation Center *and* Unite! (Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC), Local 2000

Integrated Health Services, Inc. d/b/a Pinecrest Convalescent Center *and* 1115, Florida Division of 1199, SEIU, AFL–CIO, CLC

Integrated Health Services, Inc. d/b/a North Miami Nursing and Rehabilitation Center *and* 1115, Florida Division of 1199, SEIU, AFL–CIO, CLC. Cases 12–CA–20937, 12–CA–20938, 12–CA–20939, and 12–CA–20940

July 18, 2001

ORDER DENYING MOTIONS

BY MEMBERS LIEBMAN, TRUESDALE, AND WALSH

Upon charges filed on July 5, 2000, by 1115, Florida Division of 1199, SEIU, AFL–CIO, CLC and UNITE! (Union of Needletrades, Industrial and Textile Employees, AFL–CIO, CLC), Local 2000 (the Unions), the General Counsel of the National Labor Relations Board issued a consolidated complaint and notice of hearing on October 31, 2000, alleging that the Respondents[1] violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing and refusing to bargain over the effects of the sale of their facilities and by failing and refusing to furnish the Unions with information that is necessary for, and relevant to, their duties as the exclusive bargaining representatives of the Respondents' employees. Copies of the charges, consolidated complaint, and notice of hearing were duly served on the parties to this proceeding.

The Respondents filed an answer dated November 8, 2000, admitting in part and denying in part the allegations of the complaint and setting forth two affirmative defenses. On December 8, 2000, the Regional Director issued an amendment to the consolidated complaint with regard to paragraph 10(b). The Respondents jointly filed an answer to this amendment on December 19, 2000. On January 9, 2001, the General Counsel filed a Motion for Summary Judgment with the Board, arguing that the Respondents' denials and affirmative defenses raise no litigable issues.

On January 11, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Subsequently, the Respondents requested an extension of time to file a response, and the Board set a deadline of January 31, 2001.

On February 1, 2001, the Respondents filed with the Board a response to the Motion for Summary Judgment, with an amended answer attached.[2] On February 14, 2001, the General Counsel filed a Motion to Strike the Respondents' Response and Amended Answer because, although due on January 31, 2001, they were untimely received by the Board. The General Counsel also argued that the Respondents did not comply with Section 102.23 of the Board's Rules and Regulations because the Respondents did not file an appropriate motion seeking approval to amend their answer. On February 20, 2001, the Respondents filed a response to the General Counsel's motion, asserting that their response and amended answer were timely.[3] The Respondents sought permission from the Board, by way of motion, to amend their answer to the consolidated complaint and attached another amended answer. Specifically, the Respondents argued that Section 102.23 of the Board's Rules and Regulations provide that a respondent may amend its answer at any time prior to a hearing.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion to Strike and Return Amended Answer

Section 102.23 of the Board's Rules and Regulations provides that "*[t]he respondent may amend his answer at any time prior to the hearing.*" (Emphasis added.) Under similar factual and procedural circumstances, the Board has explained that under Section 102.23, "the right to amend an answer prior to hearing is not conditioned upon the discretion . . . of the Board." *Florida Steel Corp.*, 222 NLRB 586, 587 (1976) (Board denied the General Counsel's motions to strike respondent's amended answer and for summary judgment where amended answer was filed prior to hearing). Furthermore, Section 102.23 does not require a respondent to request permission to amend its

[1] As stated in the caption, the Respondents in this proceeding are Integrated Health Service, Inc., d/b/a IHS at West Broward, Integrated Health Service, Inc., d/b/a Fountainhead Nursing and Rehabilitation Center, Integrated Health Service, Inc., d/b/a Pinecrest Convalescent Center, and Integrated Health Service, Inc., d/b/a North Miami Nursing and Rehabilitation Center.

[2] The Respondents, however, served their response on the Regional Director for Region 12 and counsel for the Unions by January 31, 2001.

[3] The Respondents assert that the Board did not timely receive a copy of the Respondents' response and amended answer because a temporary employee at the General Counsel's office misinformed the administrative personnel working for the Respondents as to the identity and address of Board personnel to whom the documents need be directed. The Respondents argue they acted in good faith upon discovering the administrative error by immediately thereafter submitting the response and amended answer to the Board.

answer prior to hearing. Thus here, because the Respondents amended their answer prior to hearing, Section 102.23 of the Board's Rules and Regulations dictate that we accept the Respondents' amended answer even in the absence of a motion requesting permission to amend.

Accordingly, the General Counsel's motion to strike and return the amended answer is denied.

Ruling on Motion for Summary Judgment

The Respondents' amended answer, in contrast to their initial answer, denies that they failed and refused to furnish the Unions with the information requested and that they failed and refused to bargain with the Unions over the effects of the sale of the facilities. Thus, the Respondents' amended answer raises questions of fact and law requiring resolution through a hearing before an administrative law judge. Accordingly, we deny the General Counsel's Motion for Summary Judgment.[4]

ORDER

IT IS ORDERED that the General Counsel's Motion to Strike and Return the Respondents' Amended Answer and the General Counsel's Motion for Summary Judgment are denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 12 for the purpose of scheduling a hearing before an administrative law judge.

IT IS FURTHER ORDERED that the administrative law judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall apply.

[4] We find that the issue of timeliness of the Respondents' response to the Motion for Summary Judgment is moot given that we have accepted the amended answer which raises questions of fact and law, and we therefore decline to rule on the General Counsel's motion to strike the response.